

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TERRELL D. CURRY,

Plaintiff,

v.

R. JONES; et al.,

Defendants.

No. C 07-1413 MHP (pr)

**ORDER PERMITTING RESPONSE  
TO REQUEST FOR ENTRY OF  
DEFAULT**

Plaintiff filed a motion for summary judgment, a motion to compel answers to interrogatories, and a request for entry of default. Due to service of process uncertainties discussed below, one or more defendants may not have been served with process and that problem needs to be resolved before other motions may be considered. Accordingly, the motion for summary judgment and motion to compel discovery are DENIED as premature. (Docket # 12 and # 16.) The court will permit defendants to file a response to the request for entry of default.

Many months ago, the court reviewed the complaint pursuant to 28 U.S.C. §1915A, found that the complaint stated a claim for relief against Dr. R. Jones, Quenn Quigley, and Yolanda Bolton, and ordered service of process on them. No defendant has filed an appearance, and the service of process forms were returned from the U.S. Marshal's office showing that none of the defendants had returned an acknowledgment of service. Clerical staff at the court made inquiries within the last few weeks and learned that (1) defendant Yolanda Bolton is now known as Yolanda Bolton Sanchez and works at CTF - Soledad rather than Salinas Valley, (2) defendant R. Jones may not have been served because his last

1 name is common, and (3) no reason was offered as to why Quenn Quigley was not served.  
2 Clerical staff also learned that defense of this action apparently has been assigned to Deputy  
3 Attorney General Kay Yu, although attorney Yu indicated she could not make an appearance  
4 in this action without a request from the defendants for representation.

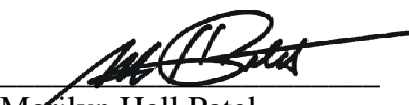
5 Normally, the foregoing would suggest that service of process was not accomplished  
6 and needed to be redone. Here, however, plaintiff filed a request for entry of default on  
7 January 12, 2009, to which he attached exhibits indicating defendants have been served with  
8 process. Deputy Attorney General Yu, identifying herself as attorney "for defendants,"  
9 issued records subpoenas on November 8, 2007 and December 17, 2007. Request For Entry  
10 Of Default, Exhs. A and B. In response to plaintiff's letter to Salinas Valley litigation  
11 coordinator E. Donnelly on December 27, 2007 inquiring about the dates on which process  
12 was served, Araceli Esparza, SSA, responded in a handwritten note: "Curry: date of service  
13 was 10/23/07 for R. Jones & Quenn Quigley. Y. Bolton was served at CTF - that is this  
14 individual's current location." Request For Entry Of Default, Exh. C.

15 In light of the fact that the prison litigation coordinator believes service of process has  
16 been accomplished and Deputy Attorney General Yu has held herself out as attorney "for  
17 defendants," it is inexplicable why defendants have not filed an appearance in this action and  
18 have not complied with the scheduling order in the order of service. The court is uncertain  
19 whether all three or less than all three defendants have been served with process as Deputy  
20 Attorney General Yu did not identify which of the three defendants she represented when she  
21 issued the subpoenas. The court will permit defendants and attorney Yu to explain why  
22 default should not be entered or should be entered against less than all three defendants.

23 Defendants may file and serve a response to plaintiff's request for entry of default no  
24 later than **March 31, 2009**. Failure to file an opposition may result in the entry of default.

25 IT IS SO ORDERED.

26 Dated: March 11, 2009

27   
28 Marilyn Hall Patel  
United States District Judge